

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1	UNITED STATES SECURITIES AND)	Docket No. 18 C 5587
2	EXCHANGE COMMISSION,)	
3)	
4	Plaintiffs,)	
5)	
6	vs.)	
7)	
8	EQUITYBUILD, INC., EQUITYBUILD)	
9	FINANCE, LLC, JEROME H. COHEN,)	
10	AND SHAUN D. COHEN,)	Chicago, Illinois
11)	August 13, 2020
12	Defendants.)	2:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - TELEPHONIC STATUS
BEFORE THE HONORABLE JOHN Z. LEE

TELEPHONIC APPEARANCES:

14	For the Plaintiff:	U.S. SECURITIES & EXCHANGE
15		COMMISSION
16		BY: MR. BENJAMIN J. HANAUER
17		MR. TIMOTHY J. STOCKWELL
18		175 W. Jackson Blvd., Suite 900
19		Chicago, Illinois 60604
20	For the Receiver:	RACHLIS, DUFF, PEEL & KAPLAN, LLC
21		BY: MR. MICHAEL RACHLIS
22		MS. JODI ROSEN WINE
23		542 South Dearborn, Suite 900
24		Chicago, Illinois 60605
25	Federal Home Loan Mortgage Corporation, Wilmington Trust, Citibank, Federal National Mortgage Assoc., U.S. Bank, Sabal TL, Midland Loan Svcs., BC57, and UBS AG:	DYKEMA GOSSETT, PLLC
		BY: MR. MICHAEL A. GILMAN
		10 South Wacker Drive, Suite 2300
		Chicago, Illinois 60606

1 APPEARANCES (Cont'd):

2

3 For Midland Loan Svcs.,
4 Thorofare Asset Based
Lending, Liberty EBCP,
And Citibank:

STAHL, COWEN, CROWLEY, ADDIS, LLC
BY: MR. RONALD A. DAMASHEK
55 West Monroe Street, Suite 1200
Chicago, Illinois 60603

5

6 For Midland Servicing:

AKERMAN, LLP
BY: MR. MICHAEL D. NAPOLI
2001 Ross Avenue, Suite 3600
Dallas, Texas 75201

8

9 For BMO Harris:

STINSON, LLP
BY: MR. SCOTT B. MUELLER
7707 Forsyth Boulevard, Suite 1100
St. Louis, Missouri 63105

10

11

12 Also Present:

MR. KEVIN B. DUFF, Receiver

13

14 Court Reporter:

MR. JOSEPH RICKHOFF
Official Court Reporter
219 S. Dearborn St., Suite 2128
Chicago, Illinois 60604
(312) 435-5562

15

16

* * * * *

17

18

PROCEEDINGS RECORDED BY
MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED BY COMPUTER

19

20

21

22

23

24

25

1 (Proceedings had via telephone conference:)

2 THE CLERK: Case 18 CV 5587, United States Securities
3 and Exchange Commission vs. Equitybuild.

4 THE COURT: Good afternoon.

5 Will the attorneys representing the SEC identify
6 themselves, please.

7 MR. HANAUER: Good afternoon, your Honor, this is Ben
8 Hanauer and Tim Stockwell for the SEC.

9 THE COURT: Good afternoon.

10 Will the attorneys representing the receiver identify
11 themselves, please.

12 MR. RACHLIS: Good afternoon, your Honor, Michael
13 Rachlis, R-a-c-h-l-i-s, along with Jody Rosen Wine, on behalf
14 of the receiver. Kevin Duff, the receiver, is also on the
15 line.

16 THE COURT: All right.

17 Now, starting with the attorneys representing the
18 institutional lenders who are going to be leading the charge
19 in this hearing, could you identify yourselves, please.

20 MR. DAMASHEK: Ron Damashek for Citibank; Midland
21 Loan Servicers, division of PNC Bank; Thorofare Asset Based
22 Lending; and, Liberty EBCP.

23 Judge, I will be addressing the role of the receiver
24 in recommending priority to the Court, which was one of the
25 items you asked to be addressed today.

1 THE COURT: Thank you.

2 MR. GILMAN: Your Honor, this is Michael Gilman. I
3 will be addressing the issue of standard discovery that we
4 discussed at the last session. I represent a dozen of the
5 mortgagees.

6 THE COURT: Okay.

7 MR. NAPOLI: Your Honor, this is Michael Napoli. I
8 also represent Midland Servicing. I will be addressing the
9 issues related to the document database and the protective
10 order.

11 THE COURT: Okay.

12 Anyone else?

13 MR. MUELLER: Yes, your Honor, good afternoon. This
14 is Scott Mueller, and I represent BMO Harris, as well as
15 Midland. And I am going to be calling in regarding the issue
16 -- we filed a motion to intervene on behalf of the lenders,
17 and I'll be addressing that.

18 THE COURT: Anyone else who wishes to enter their
19 appearance on the record today?

20 (No response.)

21 THE COURT: All right. Very well.

22 To the extent that anyone is going to be making a
23 statement today, again, if you could please identify
24 yourselves for the record, please. And if you're representing
25 a lender, another party that hasn't been introduced as of now,

1 if you could, the first time you speak, in addition to
2 identifying yourself by name, identify the party that you are
3 representing here.

4 First of all, with regard to the motion to intervene,
5 Mr. Mueller, I'm a bit -- I guess, a bit flummoxed at its
6 filing. And I guess I wanted to, first of all, see if there
7 is any objection to the motion by the SEC or the receiver in
8 this case.

9 MR. HANAUER: Good afternoon, your Honor, this is Ben
10 Hanauer for the SEC.

11 We object to the motion and would be happy to state
12 our reasons why, if the Court prefers.

13 THE COURT: Yes, please do.

14 MR. HANAUER: Thank you, your Honor.

15 Frankly, we oppose the motion. First and foremost,
16 it's unnecessary. We don't challenge any of the claimants'
17 rights to seek relief for an appellate court if they're
18 unhappy with any of the Court's rulings. And I don't think
19 the receiver feels that any of the claimants would be
20 constrained from appealing absent an intervention.

21 I note that nearly all the cases that the SEC cited
22 in its brief, the SEC cases at the Seventh Circuit where there
23 are fights between various classes of claimants, I don't
24 believe there is an intervention necessary in those cases
25 either. Certainly, we would never take the position in a case

1 that -- in this case -- that a claimant couldn't appeal on the
2 ground that there was no intervention.

3 I'd also note that it could be unwieldy if
4 intervention was allowed because then all the other claimants
5 -- and I think we're over around a thousand -- would feel
6 compelled to do so, and that would certainly burden the record
7 and the docket in this case.

8 And, finally, I would just note that the request is
9 untimely. The claimants -- or the lenders have been in this
10 game for almost two years now and never felt the need to
11 intervene. And we don't think it was necessary when they
12 first came into the case, and we don't think it's necessary
13 now.

14 Thank you.

15 THE COURT: Thank you.

16 Mr. Rachlis, anything to add?

17 MR. RACHLIS: We agree with -- we do object, and we
18 agree with the SEC's counsel's recitation of the reasons for
19 that objection.

20 THE COURT: All right.

21 And, so, if any of the claimants were to file an
22 appeal at the end of these proceedings, the receiver would not
23 object based upon, say, standing grounds and the fact that
24 they didn't -- haven't formally intervened here before me; is
25 that correct, Mr. Rachlis?

1 MR. RACHLIS: Yes, absolutely.

2 And we read the Seventh Circuit cases consistent with
3 what Mr. Hanauer had indicated. A party that's aggrieved by a
4 ruling of the Court or some determination where they believe
5 they were -- that they think they were entitled to more, we
6 would -- we certainly would think they would have the right to
7 appeal that to the Seventh Circuit; and, we certainly would
8 not be objecting on standing ground or the failure to
9 intervene as a result.

10 So, yeah, we certainly agree with your Honor there.

11 THE COURT: Okay.

12 So, Mr. Mueller, given those positions stated on the
13 record, again, I was a little puzzled by the filing of the
14 motion. What prompted its filing?

15 MR. MUELLER: Thanks, Judge. This is Scott Mueller
16 again.

17 I certainly appreciate the SEC and the receiver's
18 position. I don't think there's a lot of controversy on this
19 level about our ability, given the Enterprise holding, to
20 proceed and have appealability if there's any aggrieved ruling
21 based on our interest -- the lenders' interest -- in the
22 subject matter.

23 However, out of an abundance of caution and given the
24 fact that the Seventh Circuit discrepancy slight overlap of
25 Enterprise and First Choice, we just want to make the record

1 clear in the substance over form that if a new party were to
2 look at this from a Seventh Circuit perspective on appeal,
3 that there's no room for someone to see the fact that there
4 was no intervention, that we were not a party of record below
5 and use that for some kind of procedural hang-up or technical
6 issue down the line. We thought that we would try to nip it
7 in the bud, if we could. And, again, I don't think there's a
8 lot of controversy about how that would play out.

9 So, that's the general theme of why we brought the
10 motion: That the lenders felt that it was necessary to clean
11 up the record to a certain degree, and to establish that we
12 were indeed a party that had no issues with case law hindering
13 the ability to appeal a ruling to the Seventh Circuit.

14 THE COURT: Well, based upon my understanding of
15 Seventh Circuit law, and having heard the arguments from -- or
16 based upon the concession of the SEC and the receiver, that if
17 any of the claimants were to appeal the decisions in this
18 case, that they would not object to that appeal based on
19 either standing grounds, the fact that the individual or party
20 was not a party to the underlying action, I'm going to deny
21 the motion.

22 I just think that it does raise -- it creates a lot
23 of unnecessary procedural barriers, I think, because then I
24 think the SEC is right, Mr. Hanauer is right, that other
25 claimants would feel like they would need to intervene and

1 would feel that if they didn't, then there would be some sort
2 of assumption made as to their positions in this case, which
3 would not be accurate. And I just don't think it's necessary.

4 And, so, for those reasons, the motion to intervene
5 is denied.

6 Now, let's talk about the other issues that we
7 discussed at the last telephone conference, the first one
8 being let's talk about the standard discovery and how that is
9 going.

10 Mr. Gilman, can you address that, please?

11 MR. GILMAN: Yes, I can, your Honor. Michael Gilman
12 here.

13 We did draft standard discovery and sent a draft to
14 the receivership -- receiver -- last Friday. Late afternoon
15 -- late morning I received a response to that submission, as
16 well as the receiver's proposal for additional discovery below
17 that would be directed toward the mortgagees. I actually
18 haven't had a chance to review it all, but I can report that
19 we're in the process of, you know, agreeing -- trying to agree
20 upon standard discovery that could be issued in this matter.

21 THE COURT: Okay.

22 So, the parties are making progress along that front?

23 MR. GILMAN: Correct.

24 THE COURT: Do you --

25 MR. RACHLIS: This is Michael Rac- --

1 THE COURT: Mr. Gilman, do you and Mr. Rachlis have
2 an estimate as to how much longer you think it will take for
3 the parties to come to an agreement as to the standardized
4 discovery?

5 I know, Mr. Gilman, you just got the response, but do
6 you have any sense? Can you give me a ballpark, do you think?

7 MR. GILMAN: Well, I know I'll review them and
8 respond by mid-next week. And, then, I'm not sure how long it
9 will take for the receiver to then respond. But I don't
10 expect a long turnaround.

11 THE COURT: Okay.

12 Mr. Rachlis, anything to add?

13 MR. RACHLIS: Yes, your Honor.

14 I certainly agree that we are working on making
15 progress on that front. We are, you know, attempting to
16 collect the ideas and -- for this from any stakeholder. We
17 received items from the SEC. And, so, our role here is
18 certainly to try and collect those, evaluate them based on all
19 the information in the proof of claims, which itself provides
20 quite a bit of discovery. And, so, we do want to
21 definitely -- we think we're working on that.

22 And, so, to take -- when we receive that, we did want
23 to provide our comments in light of those issues, in light of
24 what's transpired to this point in time. And, so, I think
25 what we've provided to Mr. Gilman, I think, is an effort to do

1 so, as well as to provide other information on, basically,
2 what would be -- the form would be two standard requests, if
3 you will. One that would go to the investor lenders, and then
4 the other would go to the institutional lenders -- that's sort
5 of the way this is breaking out -- and thinks that makes
6 sense. So, we're making progress along those lines.

7 I think if we have that information by the middle of
8 next week, we certainly should be able to turn that around
9 within the week and gather any other comments or information
10 from those stakeholders that, you know, wish to comment on
11 that. So, that way we can get -- we certainly can continue to
12 move that along along that time frame.

13 THE COURT: Okay.

14 I would like to encourage the parties to see if they
15 can come to an agreement on the standard discovery within the
16 next 30 days. So, if there are any disputes -- which I hope
17 there won't be, but if there are -- then we can just kind
18 of -- we can talk about it and we'll go from there.

19 I appreciate the parties are making some progress.
20 But I do want to light a fire under the parties a little bit,
21 and let's see if we can get try to get it done in the next 30
22 days.

23 MR. HANAUER: Your Honor, this is Ben Hanauer for the
24 SEC. May I quickly be heard on this issue?

25 THE COURT: Yes.

1 MR. HANAUER: Thank you, your Honor.

2 As the Court advised the last hearing, the SEC has
3 tried to play a limited role in the standard discovery. I
4 have not personally dialogued with any of the institutional
5 lenders, but I have seen the requests that they proposed. And
6 I think there's an issue brewing that as long -- that it could
7 help to get some of the Court's guidance on on the front end,
8 so that we don't have to fight about these disputes over the
9 next 30 days.

10 And the issue is this: What the lenders sent over
11 looks -- is very consistent with what you would see for
12 discovery in a sophisticated commercial dispute. But I'm
13 afraid that it is not appropriate for the investors in this
14 case, many of whom lack sophistication in a legal sense and
15 are going to be unrepresented.

16 And, so, my comment -- which I asked the receiver to
17 transmit to the lenders -- is whether we can try and make the
18 discovery to the investors -- the standard discovery -- in
19 more simplistic, layman's, non-legalese terms, just so they
20 can have a better shot at answering it in a meaningful way and
21 not suffer prejudice if their responses are not up to snuff
22 with what we would expect from sophisticated litigators.

23 So, to the extent the Court agrees that we -- it
24 would make sense to use more simplistic, layman's language as
25 opposed to standard discovery language for the investors'

1 standard discovery, I think that, if the Court agreed,
2 guidance like that on the front end could be helpful and save
3 us a lot of disputes going forward.

4 MR. GILMAN: Your Honor, Michael Gilman here.

5 We actually did try to use as simple language as
6 possible because we understand that some of the investors may
7 not be represented and may -- whatever. But in the process,
8 we want to make sure that the investors know what we're
9 looking for, and that's why we drafted the way we did. But
10 we're willing to make them as simple as possible, provided
11 that it gives sufficient guidance to the investors so they
12 know what we're looking for and can respond.

13 My concern is if it's too simple, they may not
14 understand that certain documents are part of our request or
15 certain answers are part of our request.

16 So, we do want to keep it simple. We wanted to avoid
17 legalese. But we also want to make sure that the investors
18 understand what information we're looking for.

19 MR. RACHLIS: Your Honor, this is Michael Rachlis.

20 We did convey in our communication this morning those
21 concerns and ideas, as well as issues of avoiding duplication
22 from information that's already been provided, which also can
23 be daunting for anybody receiving that type of request. So,
24 we have attempted to convey those concerns, attempted to try
25 and pare down some of these items that we had received. And I

1 think it is -- those are very valid concerns that the SEC and
2 we've tried to share, as well.

3 THE COURT: Well, it seems like everyone is in
4 agreement that they should try to be as simple and
5 straightforward as possible, and I would encourage the parties
6 to keep on looking along those fronts.

7 You know, one of my kids just graduated high school,
8 and I think a good rule of thumb is if a high school student
9 can understand it, well, then that probably is kind of the
10 right standard to kind of think about: High school or college
11 person without any legal training.

12 So, the simpler the better. But I also understand
13 that you can't be too broad because you need to identify the
14 documents that you're looking for.

15 So, again, try your best to see if you can come to
16 some agreements. And I'm glad the parties are thinking about
17 this and working together. But I just want to try to get it
18 done in the next 30 days so we can get this process moving.

19 All right. So, let's talk about the Equitybuild
20 documents and the document database, please.

21 Mr. Napoli, are you going to address that?

22 MR. NAPOLI: Yes, your Honor. This is Michael
23 Napoli, and I represent the Midland Servicing entities.

24 Let me give you a quick where we are. We've been
25 working with the receiver to identify what documents we would

1 like and what documents are reasonably available. The
2 receiver has provided us with several document inventories.
3 We've used that information to solicit proposals from various
4 vendors, all of which have come in.

5 So, the issues that are open for the lenders are
6 basically two. One, we need to identify the appropriate
7 vendor. And that's a cost-plus service level consideration.
8 And I hope that we can get to that within the next week or so.

9 The second issue -- and it's an issue that's both
10 among the lenders and with the receiver, and that is
11 appropriate allocation of costs. Obviously, all of the
12 institutional lenders are going to be using the database.
13 And, you know, we will figure out a way to share costs, given
14 the number of lenders involved and the presence of the
15 insurance companies, which you may have noticed Midland has
16 three. Those negotiations may be a little bit complicated,
17 just given the number of parties.

18 The second issue, which your Honor raised at the last
19 hearing, was: To what extent and what's the proposal for
20 trying to share some of this information with the receiver and
21 with the investors?

22 And, you know, with respect to the receiver, our view
23 is that the receiver should most likely pay the same share
24 that the lenders themselves are paying, however that's
25 ultimately determined.

1 With respect to the investors, you know, we would
2 like some guidance on that from your Honor. In some cases,
3 depending on the vendors, it may well be that there is a
4 significant or at least an out-of-pocket cost for broadening
5 the availability of the database to other people. For most of
6 these vendors, there are a limited number of seats that are
7 available. Additional seats are available, but, you know,
8 there is a monthly cost for that.

9 So, that's where we are. I think we should be able
10 to get -- we should be able to get a lender -- I'm sorry, a
11 vendor picked within the next few weeks. We should be able to
12 decide on cost allocation over that same period of time. Once
13 that's done, there will be a time period to actually get the
14 documents. Most of the documents are in a readily accessible
15 form. So, we should be able to get those within a matter of
16 days once we push go and agree to the financing and all the
17 other terms.

18 There are a few that are more difficult because
19 they're controlled actually by third parties, either in terms
20 -- and we're going to have to work with them and their
21 financial and technical considerations, that I don't have a
22 good handle on how long that will take to resolve. And, then,
23 you know, once you get everything loaded, then there's a
24 culling process to get it to something that's useful.

25 So, that's where we're at, your Honor. Happy to

1 answer any questions that you might have.

2 THE COURT: No. Thank you very much.

3 So, at this point, I take it that -- well, we don't
4 have a estimate as to, for example, per subscriber, like for
5 non-institutional claimants making -- like how much it would
6 cost to get a subscription, monthly or otherwise, to access
7 that database if another claimant wanted to do so.

8 So, at this point in time, do you have any estimate
9 as to what the costs of that might be?

10 MR. NAPOLI: If we're strictly talking -- and it
11 varies by vendor, your Honor. For some vendors, there won't
12 be a charge. But they cost a lot more in terms of a flat fee.
13 Other vendors will charge -- we've been told they charge --
14 maybe as little as \$125 per seat per month. For other
15 vendors, they have not given us that level of detail.

16 So, there's a lot of moving parts, your Honor.

17 THE COURT: Right.

18 MR. NAPOLI: I suspect, your Honor, it's going to be
19 some charge. I don't think it will be free.

20 THE COURT: Okay.

21 I understand that there are a lot of moving pieces
22 and you're looking at various competing bids and within the
23 bids different pieces are kind of dependent upon one another.

24 At this point, does the receiver or the SEC have
25 anything that they would like to add regarding this topic?

1 MS. ROSEN WINE: Your Honor, this is Jody Rosen Wine
2 here for the receiver.

3 THE COURT: I'm sorry, who?

4 MS. ROSEN WINE: Jody Rosen Wine.

5 THE COURT: Yes. Hello.

6 MS. ROSEN WINE: Thank you.

7 So, I've been involved in conversations with counsel
8 for the lenders, as well as some of the vendors that have been
9 suggested; and, frankly, it's a bit of a surprise right now to
10 hear that they're going to require the receiver to share the
11 cost because that's not been the discussions that we've had to
12 this point.

13 The understanding from the last hearing and up until
14 right now was that the cost was going to be borne by the
15 institutional lenders. If the receiver is going to be
16 required to pay -- it sounds like they're proposing now half
17 -- that would only be possible through the imposition of a
18 receiver's lien --

19 THE COURT REPORTER: Ms. Rosen Wine, can you repeat
20 that, please. I'm having a hard time hearing you. This is
21 the reporter.

22 MS. ROSEN WINE: Yes, I'm sorry. At what point --

23 I'm saying that if the receiver is going to be
24 required to pay a share or even half of the database charge,
25 that there would have to be a receiver's lien imposed to have

1 the funds to pay that charge. I know that issue is before you
2 in other contexts, but I just wanted to mention that it would
3 be relevant to this, as well.

4 Additionally, the question that you asked about the
5 additional fee for the investor lenders and other users to
6 access the database, my understanding from at least some of
7 the vendors we've talked to is that there's unlimited users
8 available. So, that could be addressed in that manner. But
9 we do think it's important that everyone has access to these
10 documents and not just the institutional lenders.

11 THE COURT: It seems to me that with regard to access
12 to documents, as I said previously, that if there's an
13 incremental cost to the database for providing access to a
14 particular claimant, then it seems reasonable to have some
15 sort of charge for that access.

16 Now, it obviously would depend upon what the charge
17 is, but \$125 per month to access the database -- and I know
18 that we're just kind of throwing out numbers here, but
19 something in that realm, to me, does not sound unreasonable
20 for -- if a claimant wants to get into the Equitybuild
21 documents, they can pay the \$125 and they can access to their
22 heart's content for a month, or longer if they want to pay
23 more. But that amount of money doesn't seem to me cost
24 prohibitive, given the amount of funds that we're dealing with
25 here.

1 The problem of allowing -- I mean, the issue with
2 unlimited access is, of course, as Mr. Napoli mentioned, that
3 that might just have the vendor just increase its upfront
4 costs to provide that. And given the fact that we don't know
5 how many claimants would even want to bother looking at that
6 database, it seems to me that having a unlimited version, if
7 it means that's going to be substantially more expensive, is
8 not particularly appealing if there are options where a
9 claimant who wants to access it can pay a modest amount to do
10 so, claimants who don't care don't have to pay, and the
11 upfront costs would be lower theoretically if such a fee
12 schedule was practical.

13 But, again, I'm not saying anything that I think that
14 anyone would necessarily disagree with or the parties would be
15 surprised at. You know, I think that because I've made it
16 clear that to the extent that the lenders aren't going to be
17 using the documents during the claims process or that they're
18 going to use it but are not going to be using it to support
19 good-faith arguments or meritorious arguments, I think I made
20 it clear that the lenders are the people that want -- the
21 parties that want -- access to these documents will bear the
22 cost of processing and accessing the Equitybuild documents.
23 And I'm not going to let them, under those circumstances,
24 shift the costs later on to any portion of the receivership
25 estate.

1 So, the lenders have -- I'm sure they're thinking
2 they have to be economical and careful as they pick these
3 vendors, given those limitations. And, so, given that, I
4 don't think that a subscription-based program is at all
5 unreasonable, again, assuming that it's a modest charge, given
6 the amounts that we're dealing with.

7 So, at this point in time, Mr. Napoli, do you think
8 that -- it seems like you kind of have a sense and have
9 narrowed the universe of potential vendors. And I know you
10 have to do a bit more legwork to kind of finalize everything.
11 But do you think that you'd be in a position 30 days from now
12 to actually have some numbers on the table that you can
13 provide?

14 MR. NAPOLI: Yes, your Honor. I'm hoping to have a
15 vendor picked.

16 And I just want to clarify, I think, what you're
17 saying. Our understanding is -- of your Honor's direction at
18 the last status conference was, basically, that if we think
19 the documents are necessary and we want them, we have to pay
20 to obtain access to them, which is what -- which is where
21 we're -- which is what we're going along. I mean --

22 THE COURT: Yes.

23 MR. NAPOLI: -- from our view, you know, if the
24 receiver doesn't want access to them, the receiver wouldn't be
25 expected to pay a portion. And it wouldn't be 50 percent. It

1 would be -- you know, if there's ten lenders, it would be
2 divided ten ways. The receiver would be an eleventh, is what
3 we're thinking. And those percentages I just made up, your
4 Honor.

5 THE COURT: Right, right. No, I understand.
6 That's exactly right.

7 MR. NAPOLI: Yeah, I mean, I -- I mean, it's -- we
8 just view that the receiver is in a slightly different
9 position than the individual claimants in terms of a fair
10 allocation of cost for this project.

11 THE COURT: Right. Okay.

12 Well, I look forward to seeing kind of a more
13 concrete proposal in the next -- proposal to me -- in the next
14 30 days.

15 Thank you, Mr. Napoli, for all the work that you've
16 done so far, as well as Ms. Rosen Wine. Thank you for your
17 input, as well.

18 All right. One of the things -- well, I guess the
19 next thing on the list is talking about the role of the
20 receiver.

21 And, Mr. Damashek, you said you would address that
22 issue.

23 I've looked at some of the -- I've looked at the
24 submissions of the parties with regard to that issue. And,
25 so, let me hear from you at this time, please.

1 MR. DAMASHEK: Thank you, Judge. Ron Damashek.

2 What we have here is a priority dispute, which is
3 governed by state law. This is not a situation where we're
4 looking at equity or fairness. We're looking at things such
5 as what was recorded when? Is somebody a BFP? Is a mortgage
6 holder obligated to release its lien when its loan servicer
7 issues a payoff and a payoff is made in accordance with that
8 payoff letter?

9 Those are all issues of state law. Those are all
10 issues for the Court to determine. And they're not the type
11 of decisions or recommendations that you need a receiver for
12 and that are the subject of the cases cited in the brief,
13 where the receiver is looking at equitable determinations
14 among a class or classes of claims.

15 These are state law decisions normally, typically,
16 decided by courts, and they're not something that a receiver
17 is or should be involved with. The receiver is responsible
18 for managing the assets of the estate, collecting those
19 assets, challenging claims against the estate.

20 And, so, by all means, if the receiver believes that
21 anybody's lien is invalid and is not a proper lien against an
22 asset of the estate, then the receiver should have the right
23 to challenge that. But when there are two competing claimants
24 who both assert liens, who both assert priorities, then it's
25 up to those litigants to present their case to the Court and

1 for the Court to decide those issues. And there is no need
2 for the receiver to have any role in that process, especially
3 in a receivership like this where the receivership,
4 essentially, is under water.

5 These are not assets that any unsecured creditor is
6 going to receive a penny from; and, therefore, the receiver
7 shouldn't be playing any role, expending any resources or
8 asserting a receiver's lien against the assets when it's
9 really a private dispute between parties that should
10 adjudicate that.

11 And it's not only the concept of what's involved and
12 who should be deciding it, but we're also talking about a
13 situation where the receiver has asserted or may assert
14 fraudulent transfer claims against parties. Obviously, there
15 have been battles to date between the receiver and the
16 mortgagees here. And, so, there really is an adversarial
17 role. The receiver and the mortgagees have been adversarial
18 to date.

19 The receiver indicates that he will be a litigant
20 challenging, as fraudulent transfers or otherwise, certain
21 claims. And in that context, the receiver cannot be an
22 impartial party because he's litigating against us or at least
23 against some of us. And he should not at the same time being
24 in a position of making recommendations as to who as between
25 two parties has lien priority against an asset of the estate,

1 which will afford no benefit to the estate.

2 And that really puts him in a conflict situation as
3 to us; conflict situation as between the lien claimants
4 because he's supposed to be impartial as to those lien
5 claimants. And, again, if -- it's not an issue of
6 impartiality if he says my claim is invalid. But it is a
7 situation where if he's coming in and saying, well, somebody
8 else's claim is prior to yours, that is not treating us
9 equally. It's coming in, essentially, supporting a position
10 of somebody else.

11 And this Court certainly is well-equipped to address
12 those issues. There's a structure where the magistrate judge
13 is available to assist the Court if the workload is too great.
14 I, frankly, don't anticipate it to be too great because really
15 what we're dealing in any given context as we set up with
16 these tranches is claim that investor lenders' mortgage has
17 priority or mortgagee's claim has priority. There's going to
18 be a focused decision. And that's exactly what this Court
19 does every day. It's exactly what the magistrate judge does
20 every day.

21 And just frankly, the Court does not need the
22 receiver to be coming in and making determinations or
23 recommending determinations of items which are a matter of
24 law, which litigants normally assert; which we certainly are
25 in a position to assert; and, which the investors are in a

1 position to assert, as well. Whether they want to do it
2 individually, whether they want to pool their resources and do
3 it collectively, they have that ability. And it's not the
4 receiver's role.

5 THE COURT: So, Mr. Damashek, let me ask you this:
6 There are cases where the receiver -- where the court -- a
7 court has held or couple of courts have held that the receiver
8 does have a role in how the estate should be equitably
9 distributed. And I wondered in what types of cases you think
10 a receiver may assume a role in assisting the Court in the
11 manner that an estate is distributed amongst different
12 claimants.

13 MR. DAMASHEK: Well, the key issue, Judge, is just
14 what you said, which was the equitable issue. If we look at
15 some of the cases that are out there, we might have a
16 situation where there are several classes, exactly the same
17 type of investment and maybe one person redeemed their
18 investment first and got their funds back as compared to
19 somebody else who didn't and it was sort of a race to the
20 courthouse situation. And in that context, the court said,
21 you know, that is an equitable situation; that is a fairness
22 situation.

23 I am not aware of any cases, nor do I believe any
24 have been cited, where the court, essentially, transfers some
25 or all of the responsibility for making the legal

1 determination as to a matter of priority under state law.

2 That's really what we're dealing with here.

3 So, if you have within a class that you need to
4 determine, okay, how do we treat similarly situated parties
5 the same or differently, those are the kind of cases where the
6 receiver did play a role in making -- or assisting the Court
7 in saying, okay, we have Class A, Class B, Class C; here's how
8 we should treat all the creditors in Class A, and we should
9 have Class A before Class B for this reason.

10 But they're equitable reasons. They're fairness
11 reasons. They're not the legal determination as a matter of
12 state law that my lien is prior to or subordinate to another
13 lien claimant.

14 THE COURT: Okay. Thank you.

15 Let me hear from the receiver, please.

16 MR. RACHLIS: Thank you, your Honor. This is Michael
17 Rachlis.

18 I think there is a definite misconception of where --
19 what our role is. There's never been any indication -- and
20 I'm talking about sort of like everyday tasks and things of
21 that nature. There has not been any assignment that the
22 receiver has asked the Court or the Court has given to the
23 receiver to make determinations of law or anything of that
24 nature. And that is certainly not what the claims process
25 entails in terms of the role of the receiver. That always --

1 the final decisions lie with the Court, and the cases are
2 legion and that's just sort of common sense.

3 But the receiver, as an arm of the Court here, is
4 responsible for administering the claims process for the
5 Court, for the stakeholders and ultimately recommending a
6 distribution plan. And within that context, there are -- the
7 everyday tasks that the receiver does can involve taking an
8 adverse position to a claimant. That does not make for a
9 conflict of any sort. It just means that the receiver is
10 playing the role that it's been designated to do in its
11 recommendations. I mean, it could do that in terms of an
12 amount that has been requested by a claimant where they say
13 that they're entitled to a hundred thousand dollars and the
14 receiver says -- recommends that \$25,000 be provided. That's
15 not -- that is adverse to the interest of that claimant. It
16 does not create a conflict such that the receiver has no role
17 to play.

18 I think the logical conclusion of the arguments that
19 we're hearing would be there would be no -- the receiver could
20 never do anything because the receiver will ultimately -- when
21 it provides a distribution plan will -- there is going to be
22 claims that will not be happy across the board and, therefore,
23 could argue, as in other cases we've seen, that say, well,
24 they're adverse and they've been in conflict, so the whole
25 thing needs to be thrown out because they've taken -- because

1 they've been adverse to me but yet are still participating in
2 this process.

3 So, I don't think -- I think that ignores what the
4 actual role of the receiver is and, certainly, I think, does
5 not give fair credit to what the Court will ultimately be
6 doing in the process that's been proposed.

7 As to the issue of priority, the logic remains the
8 same. The receiver here is not determining priority
9 ultimately. The Court will do so. But as courts have done in
10 the past that have appointed receivers, the receiver has had
11 roles to play in terms of those issues. I mean, the Elliott
12 case is an example where that has occurred, where you have the
13 receiver making -- the receiver actually is engaged in
14 questions of priority and who has priority and who does not,
15 and the court ultimately made a decision. They made their own
16 recommendations, fought that out, the court made a decision,
17 determination as to who had priority and that -- and there the
18 law sat.

19 We're not really looking -- the process that's been
20 proposed here does not provide anything different. And I
21 think it's important what we heard about the fact that there
22 are these issues on in- -- there are issues about looking at
23 the amounts of the claims, looking at the validity of the
24 claim. And the validity of the claims can affect priority.
25 And, of course, I don't think it's contested -- even I think

1 Mr. Damashek recognizes -- that that is a role that the
2 receiver would play undisputedly.

3 So, it seems to me that the role of the receiver --
4 the receiver in its -- theoretically, in what it's supposed to
5 be doing day in and day out and as part of the claims
6 administration process, has a role to play in terms of making
7 recommendations that does not supplant the role of the Court.

8 And I think that -- and the fact that those can be
9 adverse to a party does not make a conflict. It just means
10 that the receiver is doing its job, and whether it be in the
11 Huber decision from the Seventh Circuit, where the Court
12 approved of a distribution plan over the objections of a dozen
13 or so investors who were disappointed with the methodology
14 that was ultimately approved by the district court in that
15 context; or, whether it be in the Fleet Diagnostics case where
16 there were actually priority disputes that were ongoing --
17 they were a little bit different, but there were priority
18 disputes between the receiver and the litigant that went toe
19 to toe in dealing with those issues, which the Court had no
20 problem with. And, ultimately, the district court judge and
21 ultimately the appellate court affirmed the resolution of
22 those issues.

23 I think that these are just part and parcel of what
24 the receiver is doing. And these ultimately are going to boil
25 down to recommendations. You're going to have the

1 recommendations about the validity of the claim; there are
2 going to be recommendations about the amount of the claim;
3 and, there are going to be recommendations about the
4 classifications of those claims, all ultimately taking the
5 full benefit of the receiver's work and effort through the
6 time period since almost two years ago at this time, which is
7 a benefit for the Court and for the claimants if there's an
8 efficiency points to it.

9 And, ultimately, it seems that the key element of it
10 all is that it is not the receiver that is making these
11 determinations, but is acting consistent with its role and,
12 ultimately, it will be the Court, through the process that we
13 have submitted, that's going to resolve those disputes per
14 tranche.

15 So, I think those are very consistent with what
16 receivers do and should be doing here.

17 THE COURT: Okay.

18 MR. DAMASHEK: Judge, may I respond?

19 THE COURT: Mr. Damashek.

20 MR. DAMASHEK: Yeah, sure. Thank you.

21 MR. HANAUER: Can the SEC be heard, your Honor?

22 MR. DAMASHEK: I'm sorry.

23 THE COURT: Mr. Hanauer, I'll give you a couple of
24 minutes, tops. Go ahead.

25 MR. HANAUER: Okay. Thank you, your Honor.

1 I just want to respond to what Mr. Damashek said at
2 the very start of his presentation, which is that we're not
3 dealing with equity here. Respectfully, your Honor,
4 Mr. Damashek is dead wrong on that point. I don't think
5 there's any genuine dispute that the nature of this proceeding
6 and the receivership is equitable.

7 And along those lines, equity requires some level of
8 protection for the victimized investors in this case. And,
9 really, I thought that's what was at the heart of the Court's
10 guidance after the three in-chambers conferences that we had,
11 where the lenders were demanding independent declaratory
12 judgment actions and the receiver and the SEC were advocating
13 for the approach that the Court, at the end of those three
14 conferences, said we should go explore.

15 I think, as Mr. Rachlis said, this is entirely
16 consistent with a long line of Seventh Circuit cases in SEC
17 receiverships where the receiver is, by doing his job, is
18 evaluating claims between competing classes of claimants. And
19 that happens regularly. And it doesn't put the receiver in an
20 impermissible position where the receiver has to simply act
21 objectively as an officer -- and as an officer of the court
22 making recommendations on how the receiver sees the facts and
23 the law in this case.

24 And, then, responding --

25 THE COURT: Mr. Hanauer --

1 MR. HANAUER: Yes.

2 THE COURT: -- let me ask you this: For the
3 individual investors, what is the median amount of investment?

4 MR. HANAUER: I do not -- I apologize, your Honor. I
5 do not have that information. I can't give you an accurate
6 number there. But it's my understanding that it's less than
7 \$10,000.

8 THE COURT: That the median is less than \$10,000?

9 MS. ROSEN WINE: Your Honor --

10 MR. HANAUER: I --

11 MS. ROSEN WINE: -- this is Jody Rosen Wine for the
12 receiver.

13 I just -- I would dispute that that's the median
14 amount. I think it's much higher than that. I mean, there
15 are certainly claimants that have claims in the -- less than
16 10,000, but they're the minority. I think many are five-
17 digit and six-digit figures.

18 MR. HANAUER: And, your Honor, I will absolutely
19 defer to the receiver on this. And I wasn't trying to -- and
20 that's why I pre-phrased it with I don't have that
21 information.

22 But I think it's safe to -- I know from reviewing the
23 claims chart that there are certainly claims of less than
24 \$10,000. And I think we described in our briefing why we
25 don't believe that -- why we do believe that there are a large

1 number of investors that do not have high dollar-amount
2 claims.

3 THE COURT: I would like --

4 MR. HANAUER: The usual --

5 THE COURT: -- from the -- hold on.

6 From the receiver, I would like to know -- I would
7 like to have some information regarding the distribution of
8 the amounts of individual investors. So, whether it's -- you
9 can give me -- a bell graph chart would be helpful or some
10 sort of distribution analysis -- so I know not only the total
11 number of individual investors, but approximately what that
12 distribution is.

13 MR. RACHLIS: Okay.

14 MR. MARCUS: Your Honor? Your Honor, hi, this is
15 Dave Marcus. I'm calling you from New York City. I'm --

16 THE COURT REPORTER: Can you please speak up,
17 counsel. I can't hear you.

18 MR. MARCUS: Yeah.

19 This is David Marcus. I'm calling you from New York
20 City, Judge Lee. And I just want to say I'm one of the major
21 investors; also one of the most active people involved here.

22 I want to say first, to support what Ben Hanauer said
23 about that this should be a lot more -- I'm a layman. I'm not
24 a lawyer. There's so much legalese here. Most of the
25 investors wouldn't know anything what's going on here.

1 UNIDENTIFIED SPEAKER: Well, John, my idiot
2 co-counsel, set me up for it because I'm the youngest. That's
3 why.

4 THE COURT REPORTER: I'm sorry --

5 THE COURT: Hold on. Hold on.

6 THE COURT REPORTER: -- who is that speaking?

7 MR. MARCUS: Wait, wait a -- hold on. Wait a second.

8 I invested \$1,370,000. To say that the av- -- the
9 median is 10,000 is absolutely ridiculous. It is --

10 THE COURT: Mr. Marcus, I think that that's why I'm
11 going to wait to get the information from the receiver. Okay?

12 MR. MARCUS: I know half a dozen people that have
13 invested a million dollars or more, and I know people who have
14 invested 400, 700,000. 10,000 is absolutely ridiculous.

15 And I just want to say this is a case that's -- when
16 I invested in the Equitybuild properties, I invested as --
17 because I thought I was in first position. I never signed
18 away my rights to the properties. I don't know what happened.
19 I now find out later, months after I -- you know, after it was
20 shut down that there were lenders involved. I know nothing
21 about lenders. And I should be -- this was a criminal act
22 done by the Cohens. And I have to pay for it and all that
23 stuff? I have to be punished for that?

24 I did not -- like I say, I did not -- sign away my
25 rights. And I believe that the lenders -- and I'll say this

1 right now -- shouldn't get a penny at my expense. Not one
2 penny. Now, I will fight --

3 THE COURT: Mr. Marcus, Mr. Marcus, I'm going to cut
4 you off now. Thank you very much.

5 All right. So, Mr. Damashek, anything else with
6 regard to the role of the receiver in this case; and, if so,
7 please keep it brief.

8 MR. DAMASHEK: I will, Judge.

9 Just briefly, Mr. Rachlis is incorrect when he says
10 that Elliott was a priority determination case. If you look
11 at Elliott, what the court did there was it determined the
12 validity -- I'm sorry, what the receiver litigated was the
13 validity of claims. And, again, we've indicated that if a
14 receiver says a claim is invalid -- so it is not a valid claim
15 against an asset of the estate -- by all means, have him come
16 in and do that. That's what was done in Elliott. That was a
17 consideration. There was no litigation by the receiver, no
18 determination by the receiver as to is this one prior to that
19 one?

20 And, so, I think, again, the receiver's role has got
21 to be limited to challenges to assets against the estate, not
22 challenges between claimants.

23 And the point I was trying to make earlier was that,
24 you know, whether it's Mr. Marcus, whether it's his six
25 connections, whether it's other people, it's their

1 responsibility to come in and litigate the validity -- I'm
2 sorry, the priority -- of claims between themselves and the
3 lenders. And that's just simply not the receiver's role.

4 From my vantage point, we can all look through it.
5 We all understand what the receiver is trying to do, what the
6 SEC is trying to do. But as a practical matter, you don't
7 need the receiver to come in and say, Judge, here's all the
8 evidence on the issue of priority. It's my job and it's
9 opposing counsel's job to do that, and then the Court can make
10 its determination.

11 THE COURT: All right. Thank you.

12 So, I'll take that issue under advisement, but I
13 appreciate the argument today.

14 Is there anything else that I need to address today?

15 What I'm going to do is I'm going to set another
16 status date by telephone conference about 30 days out, so that
17 more progress can be made with regard to the standard
18 discovery list, as well as the bids on the Equitybuild
19 document database.

20 Is there anything else that I need to address today?

21 Let me hear from the receiver.

22 MR. RACHLIS: Your Honor, thank you. Michael Rachlis
23 on behalf of the receiver.

24 We do have a motion that was filed to approve
25 counsel -- additional counsel -- on certain claims that we

1 noticed for today. There was no -- the SEC is not objecting
2 to that. And we'd like to get that resolved today, if we can.

3 THE COURT: I haven't taken a look at it yet. So,
4 I'll take a look at it.

5 MR. RACHLIS: Terrific.

6 The only other issue -- and I think that Mr. Napoli
7 had perhaps referenced it -- on the protective order, we are
8 still working -- we have exchanged drafts on a protective
9 order and there are -- there's one small point that still
10 needs to be addressed, although it's an important point
11 involving one provision that we -- that the SEC has indicated
12 needs to be included. Prior discussions on this issue before,
13 we did have that agreement -- at least we understood there was
14 an agreement that that was in place. But we recognize that
15 that issue does need to be resolved.

16 So, I don't know what more we could do that on that
17 today, but I did want the Court to be aware that that
18 protective order issue, we are working on it and we'll need --
19 and that will be probably brought before you shortly, as well.

20 THE COURT: Okay.

21 Anything from the SEC?

22 MR. HANAUER: No. Thank you, your Honor.

23 THE COURT: All right.

24 Anything from the lenders?

25 MR. DAMASHEK: I guess not, Judge.

1 THE COURT: Anything from anyone else on the call?

2 MR. MARCUS: Yes, your Honor. This is David Marcus
3 again.

4 I would like to know if I could get -- if you would
5 help me out with a list of the -- my fellow investors,
6 900-plus. I only know about a dozen of them. If you could
7 help me so I could get a list so we could organize. Because
8 right now this is so lopsided with the lenders, and they have
9 lawyers on retainer and all that stuff. And we are like on
10 outside looking in. We're like -- we're like we're
11 stepchildren here.

12 And if there was a way that you could either tell the
13 receiver or the SEC attorney, they could send out an e-mail
14 and they can have my e-mail. I would like to organize all the
15 other investors and see what we could do. I would love to
16 have your help in this.

17 THE COURT: Mr. Marcus, what I would suggest is you
18 contact counsel for the SEC, Mr. Hanauer, and counsel for the
19 receiver, Mr. Rachlis, with --

20 MR. MARCUS: I've done that.

21 THE COURT: -- those requests.

22 MR. MARCUS: I've done that. That's why I'm
23 approaching you, your Honor. Because they were not able to
24 help me.

25 And the bottom line -- I mean, I can get all the

1 names, but I don't have their e-mails, the contact
2 information. If they could send out e-mails to all the
3 investors and they could have my e-mail and my phone number,
4 you know, that would be helpful to me. Because right now I
5 feel there are a lot of people here -- we are suffering
6 tremendously. The investors --

7 THE COURT: Mr. Marcus, did they tell you why you
8 couldn't get that information or they just haven't responded?

9 MR. MARCUS: They just said they could not give it to
10 me. All I could get is the names, which I have anyhow. It's
11 on record. But they said they could not help me with that.
12 And I asked Mr. Hanauer and I asked -- and Kevin Duff.
13 Mr. Hanauer said there was nothing he could do. I asked him
14 several times.

15 So, if there's a way -- now, I don't need to have all
16 of their -- only people who want to respond to the e-mail that
17 the SEC attorney would send out or the receiver. They can
18 contact me. I'm more than willing to take all the time that's
19 necessary. They can give me their e-mail address, their phone
20 number. I will be more than happy to talk to any investor I
21 can, and so that we can -- I can get some kind of a consensus
22 on this, Judge.

23 You know, I was there last year and I --

24 THE COURT: Mr. Marcus, hold on for a second, okay?

25 Mr. Hanauer?

1 MR. HANAUER: Yes, your Honor.

2 THE COURT: Are you familiar with what Mr. Marcus is
3 talking about?

4 MR. HANAUER: Yes, your Honor. He has requested of
5 me that I provide him the contact information of the other
6 investors in this case. And, unfortunately, the SEC simply --
7 we don't share the names of victims with members of the
8 public, even if it is another victim.

9 I will point out, though, that it's --

10 MR. MARCUS: I'm not --

11 THE COURT: Mr. Marcus --

12 MR. HANAUER: Excuse me. Excuse me.

13 THE COURT: Mr. Marcus, please don't interrupt
14 people, okay? Let Mr. Hanauer finish.

15 MR. MARCUS: Okay.

16 MR. HANAUER: I will point out, your Honor, that in
17 the claims process, it's my understanding that the receiver
18 will be providing contact information for the -- all the
19 investors in a particular tranche. So, hopefully that could
20 go a long way to addressing Mr. Marcus' concerns.

21 But, again, absent a court order, I'm just not in a
22 position to disclose victim contact information, and I think I
23 don't need to get into all the reasons for why not.

24 MR. MARCUS: Well, Judge --

25 THE COURT: Hold on, Mr. Marcus. Hold on.

1 And, so, Mr. Hanauer, can you provide me generally
2 what the reasons for why not?

3 MR. HANAUER: Yeah. Well, these are -- like any
4 other violation of the law, these investors are victims and
5 have suffered tremendously. In many cases, their life savings
6 have been gone. And while Mr. Marcus has certainly been very
7 out front and very comfortable coming forward and trying to
8 contact people, it's my experience that -- dealing with
9 investor victims -- that a large number of them don't want to
10 be contacted and don't want to be bothered, either by the
11 press or plaintiffs' lawyers or other people like that. And
12 for that reason, we simply -- we do not provide non-public
13 information relating to our case's investigation, which is
14 precisely the type of information Mr. Marcus wants. We don't
15 do that.

16 If there's a court order, that's a whole nother
17 kettle of fish; and, obviously, we'll abide by the Court. But
18 under SEC guidance, I am prohibited from sharing non-public
19 information relating to my cases. And, unfortunately, victim
20 contact information is very much that sort of non-public
21 information that I am not allowed to disclose to the public.

22 THE COURT: Okay.

23 MR. MARCUS: Judge, may I respond?

24 THE COURT: Briefly, please.

25 MR. MARCUS: Yeah, I'll make it short.

1 I asked Mr. Hanauer and also Mr. Duff, I said,
2 listen, you don't have to -- I don't want the contact
3 information. Some people may not want to be contacted. All
4 I'm asking for is they send out an e-mail that I am willing --
5 they can have my contact information, my e-mail address and my
6 phone number, and if anyone wants to call me about this case,
7 I'm more than willing to talk to them about it.

8 I don't want Ben Hanauer to give me the names and the
9 contact information. If he can't do it, that's fine. Just
10 tell -- just e-mail a bulk e-mail to all the investors, your
11 Honor, and say that David Marcus is here; he wants to know if
12 anyone is interested in the case. I'll keep them updated.
13 I'll tell them what's going on.

14 There may be some investors who are not interested.
15 That can happen. Some of them are so depressed, you know, I'm
16 surprised that there haven't been any suicide attempts at this
17 point. I'm serious about that. Life savings. My life
18 savings down the drain. And I know two or three other people,
19 their life savings.

20 So, the bottom line to that is I don't want Mr. --
21 and I told him specifically. I don't want him to give me the
22 names and contact information. I would like the e-mails sent
23 out on my behalf and say, listen, anyone that is interested,
24 contact David Marcus, New York City, my e-mail address and my
25 phone. And they are welcome to call me or not. And that's

1 all I'm asking for, your Honor.

2 THE COURT: Mr. Hanauer, final word.

3 MR. HANAUER: Again, your Honor, if the Court is
4 inclined to do what Mr. Marcus asks, I would simply ask that
5 it not be the SEC that sends out his contact information. I
6 simply don't even have some sort of mass distribution list
7 that could go to all the investors. But I would note I think
8 the receiver does because I understand he communicates to
9 investors that way. So, if the Court is inclined to follow
10 Mr. Marcus' request that his contact information would be
11 shared with others, I think that's probably the best vehicle
12 for it.

13 MR. MARCUS: Thank you.

14 THE COURT: Mr. Rachlis, what are your thoughts?

15 MR. RACHLIS: Your Honor, we field, you know, a lot
16 of calls from investors who value their privacy. And even,
17 you know, even in the status reports that we've filed, we've
18 received, for lack of a better term, blowback, you know, that
19 there's too much information and people are sensitive. So, we
20 are sensitive to those issues.

21 What we thought would be a viable solution to the
22 types of issues that Mr. Marcus is raising is that the contact
23 information that he's looking for will be available per
24 tranche. So, really the interested parties that he is
25 thinking about, you know, in dealing with -- you know, so, the

1 investments that he's made for prop- -- in the same properties
2 that he's made them, he would -- at the time that those
3 tranches, would be basically up, he would have that
4 information each time the tranche would be called for. So,
5 that information would certainly be available through those
6 means without question.

7 So, I think that that is a solution -- at least a
8 solution -- to the issue that he's raising here.

9 THE COURT: All right.

10 Let me think about it. I'll think about it, Mr.
11 Marcus.

12 MR. MARCUS: Thank you, Judge Lee. I appreciate
13 that. Thank you very much for the consideration.

14 THE COURT: So, I'm going to set this case for
15 further status on -- I'm just looking at my calendar here --
16 on September 23rd at 1:30, and it will be by telephone
17 conference just like today.

18 At that point, I'd like to get more information with
19 regard to how -- with regard to the document database, as well
20 as the standard discovery set. And I will issue my ruling
21 either before then or at that time with regard to what I
22 believe is the proper role of the receiver in this case.

23 MR. RACHLIS: Okay.

24 THE COURT: Thank you very much.

25 MR. RACHLIS: Thank you, your Honor.

1 MR. DAMASHEK: Thank you, your Honor.

2 MR. MARCUS: Thank you, your Honor.

3 * * * * *

4

5 I certify that the foregoing is a correct transcript from the
6 record of proceedings in the above-entitled matter.

7

8 /s/ Joseph Rickhoff
Official Court Reporter

August 21, 2020

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25